

**Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver.**

The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.

(a) **Disclosure made in an Arizona proceeding; scope of a waiver.** When the disclosure is made in an Arizona proceeding and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in an Arizona proceeding only if:

- (1) the waiver is intentional;
- (2) the disclosed and undisclosed communications or information concern the same subject matter; and
- (3) they ought in fairness to be considered together.

(b) **Inadvertent disclosure.** When made in an Arizona proceeding, the disclosure does not operate as a waiver in an Arizona proceeding if:

- (1) the disclosure is inadvertent;
- (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and
- (3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Arizona Rule of Civil Procedure 26.1(f)(2).

(c) **Disclosure made in a proceeding in federal court or another state.** When the disclosure is made in a proceeding in federal court or another state and is not the subject of a court order concerning waiver, the disclosure does not operate as a waiver in an Arizona proceeding if the disclosure:

- (1) would not be a waiver under this rule if it had been made in an Arizona proceeding; or
- (2) is not a waiver under the law governing the federal or state proceeding where the disclosure occurred.

(d) **Controlling effect of a court order.** An Arizona court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court—in which event the disclosure is also not a waiver in any other proceeding.

(e) **Controlling effect of a party agreement.** An agreement on the effect of disclosure in an Arizona proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(f) **Definitions.** In this rule:

- (1) “attorney-client privilege” means the protection that applicable law provides for confidential attorney-client communications; and
- (2) “work-product protection” means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.

## ARIZONA EVIDENCE REPORTER

### Cases

502.b.010 A disclosure does not operate as a waiver in an Arizona proceeding if: (1) the disclosure is inadvertent; (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and (3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Arizona Rule of Civil Procedure 26.1(f)(2).

- \* *Lund v. Myers*, 230 Ariz. 445, 286 P.3d 789, ¶¶ 15–18 (Ct. App. 2012) (Bradford's relatives (Millers) asked court to appoint guardian and conservator for Bradford; Millers' attorney (Murphy) served subpoena on Bradford's former law firm (JS&S) asking for all "nonprivileged" documents; attorney at JS&S erroneously thought Murphy represented Bradford and thus thought there was no reason to review file for privileged document, and therefore provided Murphy with 239 pages of records, stating it was "a full and complete copy" of the JS&S file; 2 weeks later, Bradford's attorney (Shumway) contacted attorney at JS&S, told him about the subpoena, and said Bradford intended to object to subpoena; this was first indication to attorney at JS&S that Murphy did not represent Bradford; Shumway then contacted Murphy, told him about the inadvertent disclosure, said file contained privileged information and that he would review file to determine what was privileged, and asked to have the file returned to him; Murphy said he would await word on which documents Shumway considered privileged; by 3 weeks later, Murphy had not heard anything from Shumway, so Murphy distributed copies of the entire file to all other counsel in the litigation; court found (1) disclosure was inadvertent; (2) Shumway took reasonable steps to prevent disclosure; and (3) Shumway promptly took reasonable steps to rectify error, thus court concluded there was no waiver of attorney-client privilege).

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